

Before the
Administrative Hearing Commission
State of Missouri



REEL 'EM IN LLC,)	
)	
Petitioner,)	
)	
vs.)	No. 12-1969 RS
)	
DIRECTOR OF REVENUE,)	
)	
Respondent.)	

DECISION

We grant the Director of Revenue's motion for summary decision because Reel 'em In LLC filed its petition too late.

Procedure

On November 5, 2012, Reel 'em In LLC ("Reel 'em In") filed a complaint appealing a final decision of the Director of Revenue (the "Director") assessing sales tax, additions to tax, and interest. The Director filed a motion for summary decision on November 30, 2012. Reel'em In did not respond to that motion.

This Commission may grant a motion for summary decision if the Director establishes facts that entitle him to a favorable decision and Reel 'em In does not genuinely dispute those facts. 1 CSR 15-3.446(6). Parties may establish facts by admissible evidence, including a pleading of the adverse party or other evidence admissible under the law. We make the

following findings of fact based on the pleadings and the affidavit accompanying the Director's motion.

Findings of Fact

1. The Director informed Reel 'em In of its final decision to assess sales tax, additions to tax, and statutory interest by letter dated August 31, 2012 (the "decision letter").
2. The decision letter also advised that Reel 'em In had sixty days to file a complaint with this Commission, pursuant to § 144.261.¹
3. The Director mailed that letter via certified mail on August 31, 2012.
4. In response to the decision letter, Reel 'em In filed a complaint with this Commission on November 5, 2012.
5. November 5, 2012, is more than sixty days after August 31, 2012.

Conclusions of Law

The Director argues Reel 'em In's complaint is untimely, and relies on § 144.261, which establishes the limitations period for this action:

Final decisions of the director under the provisions of this chapter are reviewable by the filing of a petition with the administrative hearing commission in the manner provided in section 621.050, RSMo; except that, notwithstanding the provisions of section 621.050, RSMo, to the contrary, such petition must be filed within sixty days after the mailing or delivery of such decision, whichever is earlier.

The decision letter stated Reel'em In was required to file its complaint with this Commission within sixty days of the "date of mailing or delivery" of the Director's decision, whichever is earlier. The decision letter was mailed on August 31, 2012. Sixty days from that date was October 30, 2012. Reel 'em In filed its complaint on November 5, 2012, six days out of time.

¹ Statutory references are to the 2000 version of the Missouri Revised Statutes unless otherwise noted.

The untimely filing of Reel 'em In's complaint deprives us of jurisdiction to hear it. *Community Fed. Sav. & Loan Assoc. v. Director of Revenue*, 752 S.W.2d 794, 799 (Mo. banc 1988), *cert. denied*, 488 U.S. 893 (1988); *Springfield Park Cent. Hosp. v. Director of Revenue*, 643 S.W.2d 599, 600 (Mo. 1984). If we have no jurisdiction to hear the complaint, we cannot reach the merits of the case and can only exercise our inherent power to dismiss. *Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App., E.D. 2000).

Conclusion

We grant the Director's motion, and dismiss Reel 'em In's complaint because it was not timely filed.

SO ORDERED on September 24, 2013.

/s/ Mary E. Nelson
MARY E. NELSON
Commissioner